

Assembly Joint Resolution

No. 50

Introduced by Assembly Member Bloom

August 5, 2014

Assembly Joint Resolution No. 50—Relative to blood donation.

LEGISLATIVE COUNSEL’S DIGEST

AJR 50, as introduced, Bloom. Blood donation.

This measure would request that the President of the United States encourage, and that the Secretary of the United States Department of Health and Human Services adopt, policies that repeal the current donor suitability policies of the federal Food and Drug Administration regarding the donation of blood by men who have had sex with another man.

Fiscal committee: no.

1 WHEREAS, California law prohibits discrimination against
2 individuals on the basis of actual or perceived sex, sexual
3 orientation, gender identity, and gender-related appearance and
4 behavior; and
5 WHEREAS, The current federal Food and Drug Administration
6 (FDA) donor deferral policy, first established in 1983 when the
7 FDA had no way of testing blood or plasma for HIV, effectively
8 prohibits blood donation by men who have had sex with another
9 man even one time since 1977. The FDA essentially classifies all
10 sexually active gay and bisexual men in the highest-risk blood
11 donor category, the same category as IV drug users and people
12 who have spent more than five years since 1980 in a country that
13 has mad cow disease. Even with a clean bill of health, a gay man

1 is considered more of a threat to the blood supply than a straight
2 man who was treated for chlamydia, syphilis, gonorrhea, venereal
3 warts, and genital herpes within the past year. In 40 states, a man
4 can even give blood immediately following a tattoo or 12 months
5 after having sex with a prostitute; and

6 WHEREAS, The American Red Cross (ARC) has joined the
7 American Association for Blood Banks (AABB) and America's
8 Blood Centers (ABC) in asking for a reevaluation of current donor
9 donation deferral policies; and

10 WHEREAS, The American Medical Association (AMA) voted
11 on June 18, 2013, to oppose the decades long ban by the FDA
12 finding it is discriminatory and not based on sound science, and
13 recommends that each donor be evaluated on an individual basis
14 and not based on their sexual orientation alone; and

15 WHEREAS, In May 2013, the nonprofit Canadian Blood
16 Services, which manages that nation's blood supply, announced
17 the repeal of the policy banning men who have had sex with
18 another man from donating blood and the replacement of that ban
19 with a deferral policy; and

20 WHEREAS, In February 2010, Sweden reduced its men who
21 have sex with another man deferral from a permanent ban to a
22 12-month deferral period, joining the nations of Argentina,
23 Australia, Brazil, Hungary, Japan, and the United Kingdom. France,
24 Spain, Italy, Russia, and Portugal have adopted blood donor
25 policies that measure risk against a set of behaviors, sexual and
26 otherwise, rather than the sex of a person's sexual partner or
27 partners; and

28 WHEREAS, The AABB, ABC, and ARC, on March 9, 2006,
29 at the Blood Products Advisory Committee of the FDA, at a
30 workshop titled "Behavior-Based Blood Donors Deferrals in the
31 Era of Nucleic Acid Testing (NAT)," issued a joint statement
32 affirming that they believe that the current lifetime deferral for
33 men who have had sex with other men is medically and
34 scientifically unwarranted and recommended that the deferral
35 criteria be modified and made comparable with criteria for other
36 groups at increased risk for sexual transmission of
37 transfusion-transmitted infections; and

38 WHEREAS, It does not appear rational to broadly differentiate
39 sexual transmission via responsible male-to-male sexual activity
40 from transmission via responsible heterosexual activity on scientific

1 grounds. To many, this differentiation is unfair, creates stigma
2 without any justifiable public health imperative, and results in
3 negative attitudes to blood donor eligibility criteria and blood
4 collection facilities; and

5 WHEREAS, Blood banks in the United States routinely operate
6 with a short blood supply. After significant disasters or national
7 emergencies, the AABB, ABC, and ARC have each reported
8 regions operating with less than two days supply of blood; and

9 WHEREAS, Many men who have sex with men are healthy, do
10 not present a risk of introducing a transfusion transmissible
11 infection such as HIV into the nation's blood supply, and wish to
12 be donors without compromising the safety or reliability of the
13 supply. These men wish to join their neighbors in expression of a
14 common altruistic form of civic engagement; and

15 WHEREAS, On July 11, a nationwide blood drive will take
16 place to bring attention to the current FDA deferral policy and help
17 save lives; and

18 WHEREAS, Students and administrators have begun protesting
19 the FDA policy, including one notable example from 2008 when
20 San Jose State University president Don Kassing banned blood
21 drives from the school's campus, writing in a memo to the campus
22 community that the "FDA's lifetime blood donor deferral affecting
23 gay men violates our nondiscrimination policy"; and

24 WHEREAS, The AABB, ABC, AMA, HIVMA, and ARC
25 acknowledge the concern that a hasty relaxation of deferral criteria
26 may add uncertainty to protection of the blood supply unless
27 reliable data is available to avoid that result. The blood collectors
28 are willing to assist in collecting data regarding the actual impact
29 of changes in the deferral, in order to allow for informed
30 decisionmaking, and for the development of additional, appropriate
31 interventions to ameliorate the impact; and

32 WHEREAS, Technological advances such as individual NAT,
33 pathogen inactivation, or added means of screening hold promise
34 to substantially reduce the risk that transfusion transmissible
35 infections from all donors, including men who have had sex with
36 men, could be introduced into the blood supply, and federal
37 advisory committees have encouraged the FDA to develop these
38 technologies further. Within seven to 10 days, it can be said with
39 99.9% accuracy whether or not a blood sample is HIV-positive

1 and the chance of an HIV-positive blood sample testing negative
2 after the seven to 10-day window is about one in two million; and

3 WHEREAS, If the current men who have sex with another man
4 ban on donation were completely lifted, the Williams Institute
5 estimates that an additional 130,150 men would likely donate
6 219,200 additional pints of blood each year. That analysis also
7 suggests that lifting the ban could increase the total annual United
8 States blood supply by 0.6% to 1.4%, which may seem modest,
9 but would occur in an environment where blood supply shortages
10 are common; and

11 WHEREAS, In summary, the AABB, ABC, AMA, HIVMA,
12 and ARC believe that the deferral period for men who have had
13 sex with other men should be modified and that this consideration
14 should also be extended to donors of human cells, tissues, and
15 cellular and tissue-based products; and

16 WHEREAS, FDA guidelines followed by blood banks
17 throughout the United States inadvertently create unjustified stigma
18 directed towards gay, bisexual, transgender, and heterosexual males
19 on the basis that they have had sex with another male since 1977;
20 and

21 WHEREAS, The AABB, ABC, and ARC are required to follow
22 the FDA guidelines, which consequently are in conflict with state
23 nondiscrimination policies; now, therefore, be it

24 *Resolved by the Assembly and the Senate of the State of*
25 *California, jointly*, That the California State Legislature calls upon
26 the President of the United States to encourage, and the Secretary
27 of the United States Department of Health and Human Services
28 to adopt, policies that repeal the current donor suitability policies
29 of the FDA regarding blood donation by men who have had sex
30 with another man and, instead, direct the FDA to develop
31 science-based policies; and be it further

32 *Resolved*, That the Chief Clerk of the Assembly transmit copies
33 of this resolution to the President and Vice President of the United
34 States, to the Secretary of the United States Department of Health
35 and Human Services, to the Speaker of the House of
36 Representatives, to the Majority Leader of the Senate, and to each
37 Senator and Representative from California in the Congress of the
38 United States.

O